IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.111 of 2006
Date of decision:16.11.2006

Commissioner of Central Excise Commissionerate, Chandigarh

....Appellant

versus

M/s. Dhiman Iron and Steel Industries, Mandi Gobindgarh

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mrs. Daya Chaudhary, Assistant Solicitor General of India, for the appellant.

Mr. Pawan Kumar Pahwa, Advocate, for the assessee.

JUDGMENT:

This appeal has been preferred by the revenue against the order dated 13.12.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') in Appeal No.E/3104/03-Excise, proposing following substantial question of law:-

> "Whether the assessee working under the Compounded Levy Scheme is liable to pay duty on the goods manufactured on job work, in addition to the duty determined under the Compounded Levy Scheme?"

The assessee was engaged in manufacture of non-alloys Steel and rounds from billets on job work basis. The assessee was paying fixed duty under Compounded Levy Scheme under section 3A of the Central Excise Act, 1944 (for short, the 'Act') assessed on the basis of capacity of the assessee. The adjudicating authority issued to show cause as to why apart from fixed duty paid on the basis of annual capacity of production fixed by the Commissioner, the assessee may not be required to pay duty for

the work done on job work basis. After considering the explanation of the assessee that the assessee was not claiming exemption under Notification No.214/86, which was no longer applicable in the case of the assessee, the assessee having paid fixed duty on the basis of its capacity determined, the adjudicating authority finding that no further duty was payable, dropped the show cause notice. The Commissioner of Income Tax (Appeals) set aside the order of the adjudicating authority by observing that the assessee was not entitled to benefit of Notification No.214/86.

The assessee preferred an appeal before the Tribunal pointing out that the assessee was not seeking the benefit of the said notification but claimed that no further duty was payable, the assessee having already paid duty as per annual capacity determined in accordance with Section 3A of the Act.

We have heard learned counsel for the parties.

Provisions of Section 3A of the Act as applicable at the relevant time are as under:-

> "**3A. Determination of annual capacity of production of the factory for levy of Excise duty** – (1) Notwithstanding anything contained in Section 3, where the Central Government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods of such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.
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> (2)where a notification is issued under sub-section (1), the Central Government may, by rules, -
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> (a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity shall be deemed to be the annual production of such goods by such factory; or

(b) (i) specify the factor relevant to be production of such goods and the quantity that is deemed to be produced by use of such factor; and

(ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory:

Provided that where a factory producing notified goods is in operation only during a part of the year, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:

Provided further that in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be redetermined on a proportionate basis having regard to such alteration or modification.

(3) The duty of excise on notified goods shall be levied at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette specify, and collected in such manner as may be prescribed:

Provided that, where a factory producing notified goods did not produce the notified goods during any continuous period of fifteen days or more, duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.

(4) Where an assessee claims that the actual production of notified goods in his factory is lower than the production determined under sub-section (2), Central Excise Officer not below the rank of Joint Commissioner of Central Excise, shall, after giving an opportunity to the assessee to produce evidence in support of his claim, determine the actual production and redetermine the amount of duty payable by the assessee with

reference to such actual production at the rate specified in sub-section (3).

(5) Where the Central Excise Officer not below the rank of Joint Commissioner of Central Excise determines the actual production under sub-section (4), the amount of duty already paid, if any, shall be adjusted against the duty so redetermined and if the duty already paid falls short of, or is in excess of, the duty so redetermined, the assessee shall pay the deficiency or be entitled to a refund, as the case may be.

(6) the provisions of this section shall not apply to goods produced or manufactured -

(i) in a free-trade zone and brought to any other place in India, or

(ii) by a hundred per cent export-oriented undertaking and allowed to be sold in India.

Explanation 1 – For the removal of doubts, it is hereby clarified that for the purposes of Section 3 of the Customs Tariff Act, 1975 (51 of 1975), the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the First Schedule and the second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), read with any notification for the time being in force.

Explanation 2 – For the purposes of this section the expressions 'free trade zone' and 'hundred per cent export-oriented undertaking' shall have the meanings assigned to them in section 3."

A reference to the above provisions shows that a special scheme for levy of excise duty is laid down therein notwithstanding scheme of Section 3 of the Act. Annual capacity having been duly determined and the assessee having paid duty according to the said capacity, there is no provision by which a further duty can be demanded on the ground that

assessee had done job work, which was nothing else but use of utilization of part of its manufacturing capacity.

We are, thus, unable to hold that any substantial question of law arises for consideration.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

November 16, 2006
'gs'

(Rajesh Bindal)
Judge